

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MADELEINE GARZA, an individual,
Plaintiff,

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,
Defendant.

No. 3:18-cv-05106-BHS

**PLAINTIFF'S SUPPLEMENTAL
JURY INSTRUCTION**

PLAINTIFF'S SUPPLEMENTAL JURY
INSTRUCTION

Page 1 | 3:18-cv-05106-BHS



911 Pacific Avenue, Suite 200
Tacoma, WA 98402
Phone: (253) 777-0799 Facsimile: (253) 627-0654

1 Plaintiff respectfully submits the following proposed supplemental jury instruction.
2 This revised damages instruction reflects changes in the case including the removal of
3 Plaintiff's economic damages claim. A revised verdict form follows the revised damages
4 instruction. Further, upon review of applicable caselaw, the revised damages instruction also
5 includes as part of Plaintiff's general damages a claim for the fear of present and future health
6 problems, including the reasonable fear of an increased risk of injury. See *Wilson v. Key Tronic*
7 *Corp.*, 40 Wash. App. 802, 810, 701 P.2d 518, 524 (1985); *Sorenson v. Raymark Indus., Inc.*,
8 51 Wash. App. 954, 958, 756 P.2d 740, 742 (1988).
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Page 2 | 3:18-cv-05106-BHS



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PLAINTIFF'S PROPOSED SUPPLEMENTAL JURY INSTRUCTION NO. _____

Damages

It is the duty of the Court to instruct you as to the measure of damages. You must determine the amount of money that will reasonably and fairly compensate Plaintiff for such damages. Amtrak has admitted that it is liable for all damages caused by the derailment. In determining the measure of damages, you should consider the following:

- (1) The nature and extent of the injuries;
- (2) The disability, disfigurement, and loss of enjoyment of life experienced and that with reasonable probability will be experienced in the future;
- (3) The pain and suffering, both mental and physical, mental anguish, emotional distress, and inconvenience experienced and that with reasonable probability will be experienced in the future;
- (4) The fear of present and future health problems, including the reasonable fear of an increased risk of injury.

The burden of proving damages rests upon the Plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With references to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

1 9th Cir. Model Civil Jury Instruction Nos. 5.1; 5.2 (Modified); *Wilson v. Key Tronic Corp.*, 40
2 Wash. App. 802, 810, 701 P.2d 518, 524 (1985); *Sorenson v. Raymark Indus., Inc.*, 51 Wash.
3 App. 954, 958, 756 P.2d 740, 742 (1988).
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Page 4 | 3:18-cv-05106-BHS



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**PLAINTIFF'S PROPOSED VERDICT
FORM**

We, the jury, answer the questions submitted by the court as follows:

What do you find to be Madeleine Garza's damages:

Past and Future Non-Economic Damages \$ _____

PLAINTIFF'S SUPPLEMENTAL JURY
INSTRUCTION

1 DIRECTION: Sign this verdict form and notify the bailiff.
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4 _____
5 Date
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8 _____
9 Presiding Juror
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PLAINTIFF'S SUPPLEMENTAL JURY
INSTRUCTION

CERTIFICATE OF SERVICE

I, **Sarah Awes**, hereby declare under penalty of perjury under the laws of the State of Washington that that I am employed at Pfau Cochran Vertetis Amala, PLLC, and that on the below date I caused to be served the foregoing document on:

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Andrew Yates
Warren Babb
Lane Powell, PC
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Seattle, WA 98111-9402

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☐ Via U.S. Mail
☐ Via Facsimile
☒ ECF
☐ Via Email

PLAINTIFF'S SUPPLEMENTAL JURY
INSTRUCTION

